

ORDINANCE NO. 14-039

AN ORDINANCE ESTABLISHING A PUBLIC INFORMATION POLICY FOR THE CITY OF GILMER, TEXAS; ESTABLISHING REGULATIONS FOR SUBMITTING, RECEIVING AND PROCESSING REQUESTS FOR PUBLIC INFORMATION (OPEN RECORDS); AND PROVIDING FOR THE FOLLOWING: RULES, STANDARDS; PROCEDURES, CRIMINAL PENALTIES & SEVERABILITY

WHEREAS, the City Council of the City of Gilmer, Texas is a governmental body subject to the mandates of the Texas Public Information Act, Chapter 552 of the Texas Government Code; and

WHEREAS, the Texas Public Information Act mandates the disclosure of some data, and prohibits the release of other data; and

WHEREAS, the Public Information Act provides civil and criminal penalties for not publicly disclosing data that is open, and for disclosing data which is confidential; and

WHEREAS, the City of Gilmer, Texas is a small organization with limited resources, thus necessitating the efficient operation of City business; and

WHEREAS, section 552.230 of the Public Information Act grants the City authority to promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or regulation that is for the good government, peace or order of the City, and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that the following rules of procedure are reasonable and justified, and shall further the public interest in the effective and efficient management of public information.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Gilmer, Texas:

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**2. ENACTMENT**

The City of Gilmer Code of Ordinances is hereby amended to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

**3. REPEALER**

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

#### 4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance. Any statement or directive within the attached policy that is found to be incorrect, inapplicable or contrary to state law shall not affect the validity of the remaining contents of such statement, directive or other provisions of this policy.

#### 5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Chapter 52 of the Texas Local Government Code.

#### 6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

#### 7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

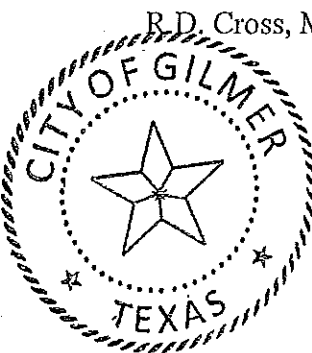
**PASSED AND APPROVED** by the City Council of the City of Gilmer, Texas on the 26<sup>th</sup> day of August, 2014.



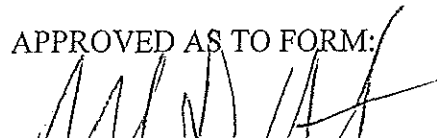
R.D. Cross, Mayor

ATTEST:

  
Kathy D. Hoover, City Secretary



APPROVED AS TO FORM:

  
Michael D. Martin, City Attorney

## ATTACHMENT "A"

# Public Information Policy

## 1. ENACTMENT PROVISIONS

### 1.1 Popular Name

This Ordinance shall be commonly cited as the "Public Information Policy."

### 1.2 Purpose

This Chapter provides standards for requesting, processing, disclosing and withholding City records. This policy is a guide for conducting City business in a professional and uniform manner. This policy is designed to assist in bringing to the City operations an understanding, cooperation and efficiency in handling requests for public information through the application of uniform procedures. The objectives of this policy are to:

- (a) Promote and increase efficiency, responsiveness to the public, and the economy in City government; and
- (b) Provide a fair and equal opportunity for obtaining access to information; and
- (c) Reduce duplication of effort and increase the efficiency with which requests are handled; and
- (d) Demonstrate the City's commitment to inform citizenry and further the public's control over the instruments they have created.

### 1.3 Scope

This Chapter applies to all data, documents, forms, and information managed or possessed by the City. This Chapter applies to all requests for information submitted to the City after the date of enactment.

## 2. DEFINITIONS

### 2.1 General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

### 2.2 Specific

**Business Days:** Those regular days when the City Hall is open for normal business. The term excludes Saturdays, Sundays, and official holidays.

*City:* The City of Gilmer, Texas, an incorporated municipality located in Upshur County, Texas.

*City Manager:* The chief administrative officer appointed by the City Council.

*City Hall:* The City's administrative office building located at 110 Buffalo, Gilmer, Texas 75644.

*City Secretary:* The chief records officer and custodian of records as designated by the City Council and the City's Charter.

*Days:* Regular calendar days wherever used in the policy without specification of "business days".

*Department:* Each individual segment of the City organization.

*Employees:* Those human individuals who work for the City of Gilmer, Texas, in exchange for financial compensation. The term includes both full-time and part-time workers. The term does not include independent contractors or volunteers.

*Officer for Public Information:* The City Secretary, as designated by the City Manager, or the City Secretary's designee, as approved by the City Manager.

*Person:* A human individual, corporation, association or agency.

*Public Information:* All data that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official City business by any department. It also includes data the City owns or has a right of access to but was prepared or stored by a third party. Examples of media in which information may exist include: (1) paper; (2) film; (3) a magnetic, optical, or solid state device that can store an electronic signal; (4) tape; (5) mylar; (6) linen; (7) silk; and (8) vellum. The general forms in which the media containing public information exist, include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, Photostat, sound recording, map, and drawing and a voice, data, or video held in computer memory. Note that certain categories of information are considered "public information" that is not excepted from disclosure unless expressly confidential by law. This term shall be construed in accordance with Chapter 552 of the Public Information Act of Texas, as may be amended.

### **3. INFORMATION MANAGEMENT**

#### **3.1 Conflicts**

This Chapter is a guide for City employees and officers. It should in no way be construed as modifying state laws regarding disclosure of public information or the retention of local government records. This Chapter is to be read in harmony with such other City policies and state statutes when possible so as to give effect to the stated purpose of this Chapter.

#### **3.2 Records Retention**

All "Local Government Records", as defined by the Local Government Records Act, Chapter 201 of the Texas Local Government Code, as may be amended, shall be maintained in compliance with that statute and any other relevant City policies. All mandatory retention periods established by the records retention schedule shall be closely observed. This policy is to be interpreted and implemented in harmony with any and all records retention schedules adopted by the City of Gilmer, Texas.

### **3.3 Records Management**

This policy is to be interpreted and implemented in harmony with any and all Records Management Program(s) adopted by the City of Gilmer, Texas.

## **4. PROCESSING INFORMATION**

### **4.1 Written Requests**

4.1.1 All requests for information submitted to the City must be in writing.

4.1.2 Oral requests for information shall not be processed. Persons requesting information orally shall be offered a Public Information Request Form (See Section 4.3 and Attachment B) to complete and return to the City Secretary.

### **4.2 Requirements**

In order to be considered administratively complete, a request for information must contain the following:

- (a) Requestor's name; and
- (b) Requestor's mailing address (for receipt of U.S. Mail); and
- (c) Requestor's telephone number; and
- (d) Requestor's fax number (if available); and
- (e) Requestor's email address (if available); and
- (f) Written description of the information sought; and
- (g) Written indication of what format and by what means the requestor wants to receive the requested information.

### **4.3 Applications**

4.3.1 The City utilizes a standard form entitled "Public Information Request Form" (See Attachment B). Applications shall be provided by the City to members of the public on the City's webpage, as well as upon request either in person, by facsimile, by electronic mail, or by U.S. Mail.

4.3.2 Upon receipt of a written request for information that is not accompanied by an Information Request Form, yet contains all of the required information, the employee or officer receiving the request shall prepare an Information Request Form for the request.

4.3.3 Upon request, City employees and officers shall assist citizens with disabilities in completing an Information Request Form when circumstances permit.

### **4.4 Submissions**

4.4.1 All requests for information must be directed to the City Secretary as follows:

City of Gilmer  
City Secretary  
Mail: PO Box 760, Gilmer, TX 75644  
In Person: 110 Buffalo, Gilmer, TX 75644  
Fax: (903) 843-3508  
Email: [kathyvd@etex.net](mailto:kathyvd@etex.net)

4.4.2 The burden is on the Requestor to comply with the mandates of this Chapter. The City shall not be obligated to respond to information requests sent to erroneous addresses.

#### 4.5 Method of Submission

A written request for information may be submitted in the following ways: in person (by hand-delivery), or via Facsimile (fax), U.S. Mail, overnight delivery, or electronic mail (email).

#### 4.6 Date Stamp

4.6.1 An official stamp shall be designated by the City Secretary

4.6.2 Any employee or officer receiving a request for information, whether as an Information Request Form or in another form, must immediately make a notation on the document as to the date it was received. A space for this data is expressly provided for on the application.

#### 4.7 Request Log

The City will maintain a file that indicates the disposition of all requests for information.

#### 4.8 Coordination with City Secretary

4.8.1.1 Forward: All requests for information received by any officers or employees shall be sent to the City Secretary within twenty-four (24) hours of being received.

4.8.1.2 Status: The City official forwarding the copy shall clearly indicate the status of the request on the accompanying Information Request Form.

4.8.1.3 Centralization: Compliance with this provision also requires a central database for the management of information requests, which is to be overseen and managed by the City Secretary.

4.8.1.4 City Attorney: The City Secretary shall forward all requests for information that may contain privileged, confidential, or exempted information to the City Attorney within twenty-four (24) hours of being received by the City Secretary.

#### 4.9 Timeliness

4.9.1.1 Promptness: All requests for information must be processed promptly and without delay.

4.9.1.2 Estimated Timeline: If the City is unable to locate, compile and otherwise prepare the requested information for public disclosure within ten (10) business days, the City must notify the requestor in writing providing the requestor with a request to narrow or clarify the scope of the request, or an estimated date and hour within a reasonable time for duplication or inspection.

4.9.1.3 A.G. Opinion: If the City is going to seek a decision from the Attorney General regarding whether the requested information is subject for public disclosure, it must contact the City Attorney within twenty-four (24) hours of receipt and the City Attorney shall seek such a decision within ten (10) business days of receipt.

4.9.1.4 Fee Estimation: If the City is going to impose a charge upon the requestor exceeding forty dollars (\$40), the City must provide written notice to the requestor within twenty (20) days.

4.9.1.5 Format: If the requested information is not available in the requested form, the City must notify the requestor within twenty (20) days.

#### **4.10 Disposition**

The time, date and nature of response for each request shall be noted on the Information Request Form by the City official handling the request.

#### **4.11 Uniformity**

4.11.1 Equal Treatment: All requests for information are to be treated uniformly without regard to the requestor's identity, motives, or method of submission so long as the request is in writing.

4.11.2 Unique Situations: Requests may be handled differently if the circumstances dictate, such as when a requestor is directly involved in litigation with the City and disparate treatment is necessary to comply with court orders or rules of legal procedure.

### **5. CHARGES FOR INFORMATION**

#### **5.1 Full Cost Recovery**

To the extent possible, the costs of responding to particular requests for information are to be borne by the requestor and not by the citizens of the City of Gilmer. All requests for information are subject to reasonable charges that include the costs related to reproducing information such as the costs of materials, labor and overhead, as allowed by law. The City follows the guidelines established by the Office of the Attorney General of Texas when applicable. Exceptions can be made in those rare and unusual situations in which the City Secretary determines that waiving the charges is in the public interest.

#### **5.2 Charges for Copies**

5.2.1 Exempt: If there are fifty (50) or fewer pages of information that are responsive to a request, the charge shall be ten cents (\$.10) per page. There shall be no charge for labor or overhead.

5.2.2 Labor and Overhead: If there are fifty-one (51) or more pages of information that are responsive to a request, the charge shall be ten cents (\$.10) per page plus labor and overhead. All charges shall conform to the guidelines promulgated by the Office of the Attorney General of Texas. See I TAC §111.63.

5.2.3 Charges for Inspection: The City will not charge for making available for inspection data maintained in standard paper form. Charges are permitted only where the City is asked to provide for inspection information that either:

- (a) Contains confidential data and public information that must be edited; or
- (b) Includes certain information that is old or voluminous, pursuant to I TAX §111.65.

**5.2.4 Outstanding Balance Due:** The City will require the payment of all outstanding balances due from a requestor for previous information requests that were prepared by the City, and for which the requestor was notified yet failed to pay the assessed charges. The City is not obligated to process new requests for information until the outstanding balances have been paid-in-full.

### **5.3 Itemized Estimate**

**5.3.1 Estimates Provided:** If a request for information will result in the imposition of a charge that exceeds forty dollars (\$40), the City shall provide the requestor with an itemized written estimate in accordance with Tex. Gov't Code §552.2615. A copy of the estimate shall be sent to the City Secretary. If an alternative less costly method of viewing the records is available, the statement must include a notice of the alternative method.

**5.3.2 Withdrawal:** A request is considered to have been withdrawn by operation of law if the requestor fails to respond in writing to the itemized statement within ten (10) business days after the statement is sent to the requestor that:

- (a) the requestor will accept the estimated charges; or
- (b) the requestor is modifying the request in response to the itemized statement.

**5.3.3 Consent Required:** In order to avoid incurring costs that the requestor might ultimately refuse to pay, City employees and officers shall not process a request for information until after the requestor has responded as provided above.

### **5.4 Programming or Manipulation of Data**

If a Requestor asks that information be provided on a diskette or other computer-compatible media, and the requested information is electronically stored, the City shall provide the information on computer-compatible media if the City has the technological capability to do so. The City is not required to purchase any hardware, software or programming capabilities that it does not already possess to accommodate a particular kind of request. If the City does not have the required technological capabilities to comply with the request in the format preferred by the Requestor, the City shall proceed in accordance with §552.228(c) of the PIA and I TAC §111.66.

## **SECTION 6. PROHIBITION**

### **6.1 Unauthorized Access**

It shall be unlawful for any person, other than a City officer or employee, to open City filing cabinets, drawers, binders, or file storage boxes where City records are located without the express permission of the City Manager or City Secretary.



#### **6.2 Unauthorized Removal**

It shall be unlawful for any person, including a City officer or employee, to remove documents, forms, files, information or data from where City records are located without the express permission of the City Manager or City Secretary.

#### **6.3 Unauthorized Destruction**

It shall be unlawful for any person, including a City officer or employee, to destroy, deface, obscure, tear, shred, or dispose of documents, forms, files, information or data from where City records are located without the express permission of the City Manager or City Secretary.

#### **6.4 Unauthorized Disclosure**

It shall be unlawful for any person, including a City officer or employee, to disclose to the public any confidential documents, forms, files, information or data from where City records are located without the express permission of the City Manager or City Secretary.

### **SECTION 7. ENFORCEMENT**

#### **7.1 Dissemination**

All employees and officers who handle City records shall be informed of the existence of these policies. All City departments shall keep copies available for reference by employees and officers. Failure to reasonably comply with this policy shall be grounds for employee discipline up to and including termination.

#### **7.2. Civil and Criminal Penalties**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

#### **7.3 Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

#### **7.4 Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (a) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

- (b) A civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- (c) Other available relief.

PASSED AND APPROVED this the 26<sup>th</sup> day of August, 2014.

*R.D. Cross*

R.D. Cross, Mayor

ATTEST:

*Kathy D. Hoover*  
Kathy D. Hoover, City Secretary



APPROVED AS TO FORM AND EFFECT:

*Michael D. Martin*  
Michael D. Martin, City Attorney